IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5478 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAVNAGAR MUNICIPAL CORPN

Versus

BABUBHAI P PATEL

Appearance:

Mr. A.R. Thakkar for Mr. J.R. Nanavati for Petitioner

RULE SERVED for Respondents No.1,2,3,4,5,6,&7.

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 03/04/2001

ORAL JUDGEMENT

1. This is a petition filed by Bhavnagar Municipal Corporation challenging the order of the Assistant Judge, District-Bhavnagar in an appeal under Section 9 of The Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The short facts leading to the present petition are as under. The respondents herein had applied for a lease in the year 1965 in respect of land bearing Survey No. 445 admeasuring 99 acres and 5

gunthas of Vadva (Moti Talav) Bhavnagar for the establishment of magnesium industries. The State Government, assuming that the land vested in the State, granted the lease for 20 years. However even on that day when the lease was granted, there was a controversy between the State and the petitioner Municipal Corporation as to the title to the said land. For that reason the respondent lessees gave written undertaking to the petitioner Corporation on 7th December 1964 to the effect that if the land is ultimately held to be of the Municipal Corporation, the lessees would pay the lease rent to the Municipal Corporation.

1.1. In the context of the aforesaid controversy the Municipal Corporation had filed Special Civil Suit No. 4/69 for a declaration of title in respect of these lands in the Court of Civil Judge (S.D.). That suit was dismissed. The Respondent Corporation thereupon filed a Regular First Appeal in the High Court being First Appeal No. 713/74 which was heard and decided by judgment and order dated 23rd December 1982, whereby the petitioner Municipal Corporation was declared to be the owner of the said property.

1.2. The lease granted in favour of the lessees expired on 20th April 1986. An intimation in this regard was given to the lessees as early as 21st March 1986. The lessees had applied for renewal of the lease by application dated 25th March 1986 which was rejected. During the pendency of the renewal application, officers of the petitioner Corporation had visited the site and had found that no industry had been established on the land, that the land is lying completely unused and idle and that the same was therefore not put to the purpose for which lease has been granted, and since the lease had already expired on 20th April 1986, the lessees were informed by letter dated 9th September 1986 to hand over possession to the petitioner Municipal Corporation and to pay up arrears of lease. A separate and specific notice under Section 4 sub-section (1) of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 dated 23.9.86 was also issued and served upon the erstwhile lessees.

1.3. The competent officer under the aforesaid Act proceeded further with the proceedings commenced with the notice under Section 4 sub-section (1) and passed an order directing the lessees to hand over possession and also to pay up the arrears of the lease amount quantified at Rs. 4,565.50 ps.

2. Being aggrieved by the order of the competent authority the erstwhile lessees preferred an appeal under Section 9 of the said Act.

3. The lower appellate Court found in favour of the erstwhile lessees, allowed the appeal and quashed the order of the competent officer. Hence the present petition under Article 227 of the Constitution.

4. Having heard the learned counsel for the petitioner I am satisfied that the impugned judgment and order of the lower appellate Court is grossly incorrect, it is on a total misunderstanding of the law and also amounts to a perversity in law. The same judgment if permitted to stand would amount to traversity of justice. The same therefore requires to be quashed and set aside for the following reasons.

5. The lower appellate Court has recorded a finding of fact that the lessees cannot be asked to pay the amount of the lease once over again to the petitioner Corporation inasmuch as the lease amount has already been paid earlier to the State Government. This is a finding of fact based on no evidence whatsoever.

6. The lower appellate Court has completely confused itself and has misapplied the law applicable to the found facts of the case, which is obvious from a plain reading of Paragraph 8 of the impugned judgment.

6.1. The lower appellate Court has completely mixed-up and interpolated with each other, the two separate and distinct provisions of law namely Sections 4 and 7 of the said Act, which operate in different fields and have different objects and purposes.

7. Section 4 of the said Act reads as under;

"4. Issue of notice to show cause against order of eviction.____

(1) If the estate officer is of opinion that any persons are in unauthorised occupation of any public premises and that they should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall___

(a) specify the grounds on which the order of eviction is proposed to be made; and

[(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises,___

(i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than seven days from the date of issue thereof; and

(ii) to appear before the estate officer on the date specified in the notice along with the evidence which they intend to produce in support of the cause shown, and also for personal hearing, if such hearing is desired.]

(3) The estate officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned."

7.1. It is both obvious and clear that the Estate Officer is required to issue notice in the nature of a show cause notice, that such notice should be issued to those persons who in the opinion of the officer are in unauthorised occupation of any public premises, and the notice shall specify the reasons upon which the proposed order of eviction is proposed to be passed.

7.2. From the logic and reasoning of the lower appellate Court contained in Para 8 of the impugned judgment, it becomes obvious that the lower appellate Court has found that Section 4 has no application to the facts of the case inasmuch as there is no existing order of eviction at the time when notice under Section 4 was issued. In fact, Sec. 4 only requires the receipient of the Notice to show cause why an order of eviction should not be passed. If an order of eviction already existed, a notice u/s. 4 would be redundant.

7.3. The logic and reasoning of the lower appellate Court proceeds on the basis that the impugned notice is notice of eviction on the ground of arrears of lease amount. This logic and reasoning is based on the interpretation and application of Section 7 of the Act, as perceived by the lower appellate Court. The lower appellate Court has found that since the impugned notice is not under Section 7, and since the procedural formalities and the consequential determination of the arrears of lease has not been carried out, there is no proper and valid determination of the arrears of lease amount. Since there is no valid determination of arrears of lease amount, the demand for arrears of the lease amount would not be justified, and therefore eviction would not be justified. What the lower appellate Court failed to appreciate is that although the impugned notice is admittedly under Section 4, and admittedly not under Section 7, it only mentions the fact that there were arrears of lease amount, but did not make any demand of the same. Thus in fact, it is nobody's case that the quantification of arrears of the lease amount had been effected by following the due procedure under Section 7. This is not even the Corporation's case. Since the impugned notice does not make a demand for the arrears of lease but merely makes a casual mention of it in the notice under Section 4, it does not ipso facto invalidate the notice issued under Section 4(1), particularly since all the essential characteristics which are required of a notice under Section 4(1) of the Act are otherwise fulfilled.

8. On the facts of the case there is no dispute that the original period of lease expired on 20th April 1986, that the impugned show cause notice under Section 4(1) was issued on 23rd September 1986, and that the expiry of the tenure of the lease is the principal ground on which possession is sought and/or the proposed order of eviction was proposed to be made.

9. In the premises aforesaid the impugned judgment and order of the lower appellate Court at Annexure "B" to the petition is quashed and set aside. However, the original order of the Deputy Commissioner dated 4th December 1986 also cannot be upheld in its entirety. The said order is confirmed to the extent where it directs eviction of the present respondents but cannot be confirmed so far as quantification and demand of the arrears of the lease amount is concerned (since quantification of the arrears has not been done in accordance with the provisions of Section 7 of the said

Act).

10. This petition is therefore partly allowed. Rule made absolute accordingly with no order as to costs.
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